

ORDINANCE NO. 2020-02

AN ORDINANCE OF THE VILLAGE OF MALCOLM, LANCASTER COUNTY, NEBRASKA, TO PROVIDE RULES AND REGULATIONS FOR MOBILE FOOD VENDORS; TO REPEAL ALL ORDINANCES IN CONFLICT; TO PROVIDE FOR PUBLICATION; AND TO PROVIDE AN EFFECTIVE DATE

BE IT ORDAINED BY THE CHAIRMAN AND BOARD OF TRUSTEES OF THE VILLAGE OF MALCOLM, NEBRASKA:

Section 1. Article X of Chapter 10 of the Malcolm Village Code shall be moved renumbered as Article XI of Chapter 10 of the Malcolm Village Code.

Section 2. The following language shall be added to Article X of Chapter 10 of the Malcolm Village Code.

**Article X. Mobile Food Vendors
(Ordinance No. 2020-02, June 3, 2020)**

10-1001 Definitions. For the purpose of this article, the following terms shall have the meanings respectively ascribed to them:

Caterer shall mean a person who transports ready-to-eat food from a permitted food service establishment to another location or building for service on a per event basis for hire, and does not include a temporary food service event.

Food shall mean any raw, cooked, or processed edible substance, beverage, ingredient, ice, or water used or intended for use or for sale in whole or in part for human consumption.

Mobile food vendor shall mean a person who by traveling from place to place upon the public ways sells or offers for sale food from public or private property to consumers for immediate delivery and consumption upon purchase, including but not limited to any such person engaged for the purposes of any public or private event occurring within the corporate limits of the Village of Malcolm, Nebraska. The following activities are excluded from such definition, and, alone, do not subject a vendor to being covered by such definition: (a) the sale or offer for sale of farm products produced or raised by such a vendor from land occupied and cultivated by him/her; or (b) the sale or offer for sale of food by a caterer.

Permanent food establishment shall mean a fixed building which a person occupies on a continual basis and from which such person sells or offers to sell food for immediate delivery and consumption upon purchase. Such term shall not include a location where a mobile food vendor sells or offers to sell food.

Village Board shall mean the Board of Trustees of the Village of Malcolm, Nebraska.

Village Clerk shall mean the Village Clerk of the Village of Malcolm, Nebraska or his/her authorized designee.

10-1002 License required. It shall be unlawful for any person to sell or offer for sale food as a mobile food vendor or operate as a mobile food vendor within the Village, unless such person complies with the requirements and regulations of this article, including holding a valid and active mobile food vendor license issued by the Village of Malcolm.

10-1003 Application. An applicant for a license pursuant to this article shall file with the Village Clerk a signed application on a form to be furnished by the Village Clerk, which shall contain the following information;

- (a) The applicant's business name, address, and phone number; and e-mail address, if any;
- (b) If the applicant is a corporation, partnership, or other entity, the names of all officers and managers of such entity;
- (c) If food is to be sold from any motor vehicle, the vehicle license numbers and descriptions of all vehicles from which the applicant proposes to sell food, and the names of all persons expected to drive such vehicles;
- (d) The description of the general type of food items to be sold;
- (e) Documentation (certificate) from the State of Nebraska (Dept. of Agriculture) Health Department showing its approval of the applicant's sale of food, if required;
- (f) A copy of the State of Nebraska sales tax permit, or proof of an applicable sales tax exemption, for the applicant;
- (g) A general description of the types of locations the applicant anticipates selling from;
- (h) A copy of the vehicle registration and proof of insurance;
- (i) Such other information as the Village Clerk may require in the application form.

10-1004 Issuance or denial.

- (a) Upon receipt of a complete application for a license pursuant to this article, the Village Clerk shall make or cause to be made any inquiry or investigation that may be necessary to determine whether the applicant is in compliance with the provisions of all applicable laws and this Code.
- (b) After receipt of the completed application and application fee, the Village Clerk and/or Village Board Member shall either approve or deny the application. Grounds for denial may include, but are not limited to, the following:

- (1) A finding that the application is incomplete;
- (2) The nonpayment of applicable fees;
- (3) A finding that the application is not in conformance with any applicable laws or this Code;
- (4) A history of violations which, in the discretion of the Village Board, indicates that the issuance of a license to the applicant may place the health, safety, and/or welfare of the residents of the Village of Malcolm at risk of harm.

10-1005 License fee and renewal.

- (a) An application for a license under this article shall be accompanied by a nonrefundable processing fee of \$100.00 for an annual license or \$25.00 per day for a daily license.
- (b) An annual license issued under this article shall expire on December 31 of each year, unless renewed for the following year by the licensee. The licensee shall renew the license for the following year by filing with the Village Clerk, on or before December 31, a registration updating or confirming the information provided in the immediately preceding license application or registration. The registration shall be on a form provided by the Village Clerk.

10-1006 Sales regulations. Mobile food vendors shall comply with the following regulations:

- (a) A mobile food vendor shall not sell nor offer to sell food from a location within 100 feet of the main entrance used by customers to enter or exit a permanent food establishment during the hours food is sold within such permanent food establishment, unless each such permanent food establishment within such area has provided written consent.
- (b) A motor vehicle from which a mobile food vendor sells or offers to sell food shall not exceed 40 feet in length and 102 inches in width. A mobile food vendor selling or offering the sale of food from or using a trailer or other auxiliary equipment shall, during such operations, keep the trailer or auxiliary equipment hitched to an operable motor vehicle towing it, unless otherwise permitted by the Village in association with an authorized street show, festival, parade, block party, or similar event. An attached trailer or other auxiliary equipment shall not exceed 102 inches in width, and the combined length of the motor vehicle and trailer or auxiliary equipment shall not exceed 60 feet. The maximum dimensions in this subsection may be exceeded by a particular motor vehicle, trailer, or piece of equipment, if approved by the Village Board upon a mobile food vendor's application for a waiver.
- (c) A mobile food vendor may sell or offer to sell food from a motor vehicle at a location in a Village right-of-way open to traffic or parking, but only from a motor vehicle parked in a location where a motor vehicle is authorized to park by law, signage, or Village permit. Such a motor vehicle and auxiliary equipment shall not be parked at a diagonal parking space, unless specifically authorized by the Village. Such a motor vehicle and auxiliary equipment shall not be parked in a parking space adjacent to the corner of a street intersection.
- (d) A mobile food vendor shall not sell or offer to sell food from a location which would involve customers to be waited on or served while standing in a portion of a street being traversed by motor vehicle traffic.
- (e) A mobile food vendor who sells or offers to sell food from a location on property other than a parking space or Village right-of-way shall first obtain and possess, and be able to exhibit upon request, each of the following:
 - (1) Written consent of the owner of such property; and
 - (2) A temporary use permit issued by the Village; provided, that a temporary use permit shall not be required if the mobile food vendor is present as an authorized part of a private event or an event authorized by another Village permit.
- (f) A mobile food vendor shall not sell nor offer to sell food from a Village park property unless he/she possesses the written consent of the Village of Malcolm.
- (g) A mobile food vendor shall not sell nor offer to sell food from a school property unless he/she possesses the written consent of an authorized representative of the school.
- (h) A mobile food vendor shall not sell nor offer to sell food from a location within an area authorized for a street show, festival, parade, block party, or similar event, or within 200 feet of any boundary of such authorized area, unless the mobile food vendor is in possession of the written consent of the event licensee to sell or offer to sell food from that location.
- (i) A mobile food vendor shall possess and be able to exhibit his/her license under this article, all required State of Nebraska (Dept. of Agriculture) Health Department permits, a State of

Nebraska sales tax permit or proof of sales tax exemption, and any other written consents or documentation required under this article, at all times during which the mobile food vendor is selling or offering to sell food.

(j) The Village Board of Trustees may order a mobile food vendor to move from or leave a specific location if the operation of the mobile food vendor at that location causes an obstruction to vehicular or pedestrian traffic or otherwise endangers the health, safety, or welfare of the public. The Village may tow or otherwise move a mobile food vendor's vehicle or other auxiliary equipment to another location if the vehicle or equipment presents a danger to public safety and the mobile food vendor fails to move the same.

(k) An individual representative of the mobile food vendor shall be present with the motor vehicle and other auxiliary equipment operated by the mobile food vendor at all times that it is parked in Village right-of-way or on Village property, and at all times that it is parked on private property at a location where food is or will be offered for sale.

(l) A mobile food vendor may sell or offer to sell food seven (7) days a week, but only from **8:00 a.m. to 9:00 p.m. unless extended by the Village Board on a case-by-case basis**. It shall be unlawful for a mobile food vendor to sell or offer to sell food at any other times. Notwithstanding this subsection, upon evidence of endangerment of public safety, the Village Board of Trustees may further limit hours of operation for all mobile food trucks within the Village, as needed for the protection of public safety.

(m) A mobile food vendor using a motor vehicle shall maintain a motor vehicle liability insurance policy for such motor vehicle as required by state law and shall exhibit proof of such policy when requested.

(n) A mobile food vendor shall maintain in operable condition all fire suppression equipment or devices as required by local, state, or federal law.

(o) It shall be unlawful for a mobile food vendor to sell or offer to sell alcoholic drinks or food.

(p) A mobile food vendor shall visibly display his/her business name on his/her motor vehicle or auxiliary equipment.

(q) A mobile food vendor shall provide trash receptacles for the collection of trash and recyclable materials in sizes sufficient to serve his/her customers. Prior to leaving a location, the mobile food vendor shall pick up and properly dispose of any trash, litter, or recyclable materials within **25 feet of the location**. Receptacles and their contents shall be removed from the location for proper disposal or recycling, and contents shall not be deposited in public trash or recycling containers on Village right-of-way or Village property.

(r) A mobile food vendor shall not place on Village right-of-way or Village property any freestanding sign, table, chair, umbrella, electric generator, or other fixture or equipment; provided, that a mobile food vendor may place one identification or menu sign and one table (not for seating customers) on the sidewalk or other area directly adjacent to his/her parked motor vehicle or other equipment.

(s) A mobile food vendor shall comply with all Village **ordinances regulating noise**.

10-1007 Revocation or suspension.

(a) The Village Board **may** revoke or suspend a license issued under this article for any of the following reasons:

- (1) Any fraud, misrepresentation, or false statement contained in the application for license;
- (2) Any fraud, misrepresentation, or false statement made in connection with the selling of food;
- (3) Any violation of this article or any applicable laws or provisions of this Code;
- (4) Conducting the business licensed under this article in an unlawful manner or in such a manner as to constitute a breach of the peace or a menace to the health, safety, or general welfare of the public.

(b) The Village Board **shall** revoke a license issued under this article for any mobile food vendor who is convicted of two (2) or more separate violations of the provisions of this article or of any similar article in effect in any other jurisdiction within any consecutive 12-month period. For purposes of this section conviction shall mean any finding of guilt or liability on the part of the mobile food vendor by a court of competent jurisdiction and shall include any conviction that has previously been set aside.

(c) To revoke or suspend a license, the Village Board shall provide written notice to the license holder stating the revocation or suspension action taken, the grounds for such action, and the availability of an appeal under this section. Such notice shall be served personally upon the license holder or sent by regular U.S. mail to the license holder's address as stated in his/her application.

(d) A license holder aggrieved by the decision of the Village Board under this section must file an appeal with the Village Clerk within ten (10) days of the date of mailing of the notice of revocation or suspension. Such appeal shall be heard by the Village Board of Adjustment within three (3) months.

(e) A person whose license has been revoked under this article may not re-apply for a new license for a period of six (6) months after the effective date of the revocation.

10-1008 Special districts.

(a) The Village finds that the Village's neighborhoods and business district have differing characteristics and will be affected in varying ways by the operations of mobile food vendors. Thus, it is appropriate to provide for the creation of special districts subject to special rules governing mobile food vendors.

(b) The Village Board of Trustees may by ordinance establish a special district with defined geographic boundaries, and adopt special rules governing mobile food vendors to be applied, based on a reasonable showing of public health and/or public safety concerns demonstrating the need for different operation of mobile food vendors, within such special district.

Section 3. Any conflicting provisions in the Malcolm Village Code or other ordinances are hereby repealed. All other provisions in Village Code Chapter 10 shall remain in full force and effect except as revised herein.

Section 4. This ordinance shall be published in book or pamphlet form and posted in three (3) public locations in the Village of Malcolm.

Section 5. After passage, approval, and publication, this ordinance shall take effect and be in full force on January 1, 2021.

SUSPEND
READINGS
(3/4 VOTE)

6/3/2020

FIRST READING

6/3/2020

SECOND READING

THIRD READING

PASSED AND APPROVED THIS 3rd DAY OF JUNE 2020



David Rohe, Chairperson, Board of Trustees

ATTESTED AND PUBLISHED IN BOOK OR PAMPHLET FORM AND BY POSTING IN THE VILLAGE HALL, POST OFFICE, AND FIRE STATION PER § 1-405 AND § 1-410 OF THE MALCOLM MUNICIPAL CODE WITHIN FIFTEEN (15) DAYS OF PASSAGE ON THE 3rd DAY OF JUNE 2020.



Nadine Link, Village Clerk

